cr. A. 1150/95 (2)

50000 1-79

CF0000058416

APPEAL OF PRISONER

No. 599 Name मानसाय उर्फ मानसिंह

Father's name सोमारूराम

Residence आछपाल पारा Age 24 वर्ष

थाना- कोटेडीगर जिला- बस्तर

Sentenced to आजीवन on 2.12.94

Under section 302/34 I.P.C. by अपर-सत्र-न्यायाधीश कांकेर

it is explained to the prisoner that if he states he wishes to be represented be a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears either. If the legal practitioner does not appear with in ...ven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once wish the case and wil not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date of which copy received 22.12.94

3 Date on which Appeal sent 31.12.94

4 Whether the prisoner wishes to be represented or not yes/~~No.~~

No. 599 Name मानसाय उर्फ मानसिंह उ/० सोमारूराम

Continued in बस्तर Jail कांकेर

No. 1008 dated 31.12.94 19

Forwarded to the ~~Deputy Commissioner~~ मुख्य न्यायिक दण्डाधिकारी जगदलपुर

to gather which a copy of judgement or order passed in the case for favour of (बस्तर)

trensemission to the proper Appellate Court,

Superintendent Sub Jail, Kanker Jail

Date of receipt in Deputy Commissioner's Office 26/6/95 with ind...

Date of receipt of record to accompany Memo of Appeal of the Appeliate Court.

No. 60 dated 25/6/95 197

Forwarded to the Hible Distt. and sessions Judge Jagdalpur

Deputy Commissioner

Date of receipt in Appeliate Court

P.T.O.

XI-HC-22

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Criminal Appeal No. 1150/95 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench :
Hon'ble Shri Justice L.C. Bhadoo, J &
Hon'ble Shri Justice V.K Shrivastava, J.

13/12/2005

Smt. Kiran Jain, Counsel for the appellant.

Shri U.N.S.Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State.

Oral judgment.

By this appeal through the Superintendent, Sub-Jail, Kanker, the accused/appellant – Mansai has questioned the legality of the conviction and order of sentence dated 02/12/1994 passed by the Additional Sessions Judge, Kanker, in Sessions Trial No. 132/92, whereby learned Sessions Judge after holding the accused/appellant along with his father Somaruram guilty for the commission of offence under Section 302 read with Section 34 of the I.P.C., convicted and sentenced each of them to undergo rigorous imprisonment for life.

The accused/appellant No.2 Somaruram had preferred a separate appeal i.e., Criminal Appeal No. 1151/95 against the conviction and on information received by Additional Public Prosecutor for the respondent/State that Somaruram had expired in the custody while undergoing the sentence and the same has been abated.

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XI-HC-22

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश ।

The prosecution case, in brief, is that on 05/10/1992 on being called by Rainibai and Somaruram, complainant Janmati along with her husband Budhsen went to their house at about 10.00 a.m. Her elder aunt (Badi Maa) Ramli Bai, brothers Mankuram and Mansai also came there in order to celebrate the festival of "Navakhai" (the crop of new rice being eaten on that day). While celebrating the festival, all consumed Landa (used for purpose of intoxication as liquor). At about 4.00 p.m. in the evening deceased Mankuram asked the accused/appellant Mansai as to why he has purchased the new cycle out of the money which was brought after selling the Mustard, upon which Rainibai said that what has happened if the cycle has been purchased, the new cycle can be used by both the brothers, on which the deceased Mankuram attacked on the head of his mother with a big spoon as a result of which blood started oozing out of the injury, upon which Somaruram asked Mankuram as to why he has assaulted Rainibai. He picked up a wooden club and attacked on the head of Mankuram. Thereafter, the present accused/appellant Mansai also picked up Peeda and assaulted on the back and head of Mankuram as a result of which he died on the spot. On receiving the merg intimation (Ex.P/13) of PW/2-Janmati, Station House Officer, Police Station: Chhotedongar took up the investigation and went to the place of occurrence. After giving notice (Ex.P/3), he prepared Panchnama (Ex.P/4) of the dead body of Mankuram and sent the same for post-mortem to Primary Health Centre,

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टीरजिस्ट्रार के अन्तिम आदेश

Chhotedongar where Dr. H.L. Jangde conducted the postmortem on the body of Mankuram and prepared the postmortem report (Ex.P/1). During police custody, the accused/appellant Mansai gave a memorandum (Ex.P/5) regarding the place where he kept "Peeda" and the same was taken into custody (Ex.P/6). Site plan was prepared (Ex.P/10) and based on that first information report (Ex.P/12) was registered. After completion of investigation charge-sheet was filed agianst the present appellant and Somaruram in the Court of Additional Chief Judicial Magistrate, Kanker, who in turn committed the case to the Sessions Judge, Jagdalpur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to prove the offence against the accused persons examined seven witnesses. On the other hand, the learned Sessions Judge recorded the statements of the accused persons under Section 313 of the Cr.P.C., in which they denied the prosecution evidence and stated they are innocent and have been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned Additional Public Prosecutor and the learned counsel for the accused/appellants, convicted and sentenced each of the accused as mentioned in para first paragraph of the judgment.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard Smt. Kiran Jain, learned counsel for the accused/appellant and Mr. U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the respondent/State, perused the judgment of the trial Court and the evidence available on record.

The fact of the homicidal nature of death of Mankuram has not been disputed by learned counsel for the accused/appellant. Apart from that, from the evidence of eye-witnesses PW-2 -Janmati and PW/3 – Budhsen and PW/4 Ramlibai and the medical evidence of PW/1- Dr. H.L. Jangde along with postmortem report (Ex.P/1), it is established that the death of Mankuram was homicidal in nature.

Now, coming to the involvement of the accused/appellant in crime in question is concerned, eye-witnesses namely Janmati – PW/2, Budhsen-PW/3 and Ramlibai-PW/4, who were present at the time of the incident, have categorically stated that in the first instance the co-accused Somaruram assaulted with a wooden club on the head of the deceased and thereafter the present accused/appellant also assaulted the deceased with "Peeda" on his head. All these witnesses are closely related to the deceased and accused/appellant and in their cross-examination, nothing has been brought on record on account of which their evidence becomes doubtful or un-acceptable. Therefore, the finding of the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

trial Court regarding involvement of the accused/appellant in assaulting the deceased is concerned, the same is based on the legal evidence which requires no interference by this Court.

Learned counsel for the accused/appellant argued that in the first instance, deceased Mankuram assaulted with a big spoon on the head of Rainibai which enraged Somaruram, the husband of Rainibai and Mansai, the son of Rainibai and both of them assaulted on the head of Mankuram in a sudden quarrel. No intention can be attributed that the accused/appellant assaulted the deceased with an intention to cause the death of Mankuram. Even PW/1 - Dr. H.L. Jangde has not stated that the injury was sufficient in the ordinary course of nature to cause the death. On the other hand, Mr. U.N.S. Deo, Additional Public Prosecutor supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the accused/appellant, we have scanned the evidence of witnesses. It is an admitted position that when the quarrel started on a question of purchasing a new cycle, the deceased assaulted Rainibai with a big spoon on her head as a result of which blood started oozing out of the injury which enraged Somaruram (since deceased) and the accused/appellant and both of them assaulted on the head of deceased Mankuram with a wooden club and Peeda as a result of which Mankuram died on the

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spot. As per the medical evidence, no bone injury was found. However, as per the medical evidence of Dr. H.L. Jangde, Makuram died on account of haemorrhage and head injury. From the facts and circumstances of the case and the nature of injury and nature of weapon used by the accused, it cannot be attributed to the accused that he assaulted the deceased with an intention to cause his death as the deceased and the accused were brothers. The dispute started on small thing and when deceased assaulted Rainibai which enraged the accused and he assaulted with a wooden Peeda lying nearby all of a sudden, in a heat of passion, without any pre-plan or pre-meditation, in a sudden quarrel. Therefore, the offence against the accused/appellant is covered under Exception 4 of Section 300 of the I.P.C., because knowledge can be attributed to the accused when he assaulted on the head of Mankuram and by such act he may likely to cause his death.

In view of the foregoing discussions, we are of the considered opinion that the conviction of the accused/appellant for commission of offence under Section 302 of the I.P.C., cannot be sustained.

In the result, the appeal partly succeeds and the same is allowed. The conviction and sentence imposed on the accused/appellant under Section 302 of the I.P.C. are set aside. Instead thereof, the accused/appellant is convicted for commission

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of offence under Section 304 Part II of the I.P.C. and sentenced to undergo R.I. for ten years.

The accused/appellant is in custody since 1992. The period of detention already undergone by the accused/appellant during investigation and trial and pendency of this appeal, therefore, the accused/appellant shall be entitled for set off of the same against above ten years of sentence. He be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

Raju

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